

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

Sparkle Futrell and Etoya Jefferies,  
Individually and as Guardians of L.J., a minor  
under the age of 14,

Plaintiffs,

vs.

Barrs Recreation, LLC, BCI Burke Company,  
LLC, and Outback Creations, LLC,

Defendants.

Civil Action No.:

**NOTICE OF REMOVAL**

1. Defendant BCI Burke Company, LLC (hereinafter, “BCI”) files this Notice of Removal of the above-titled action from the Court of Common Pleas of Cherokee County, South Carolina, to the United States District Court for the District of South Carolina, Spartanburg Division, pursuant to 28 U.S.C. § 1441.

2. The above-titled action was instituted by the Plaintiffs against BCI by service of a Summons and Complaint that were filed on December 8, 2021, in the Cherokee County Court of Common Pleas and served on BCI via certified mail, on December 27, 2021. The action is currently pending in the Court of Common Pleas for Cherokee County, South Carolina, Case No. 2021-CP-11-00766. An Amended Summons and Complaint were filed on January 19, 2022 and served upon BCI via certified mail on January 24, 2022. No further proceedings have been filed and the original and Amended Summons and Complaint constitute all process, pleadings or orders properly served in this action. Pursuant to 28 U.S.C. § 1446(a), BCI files herewith a copy Amended Summons and Complaint.

3. There is jurisdiction over this removed action pursuant to 28 U.S.C. § 1441 because

Plaintiffs could have originally filed the action in this Court pursuant to 28 U.S.C. § 1332. Specifically, this suit is removable because there is complete diversity of citizenship between Plaintiffs, BCI, Barrs Recreations, LLC, Outback Creations, LLC, and, upon information and belief, based upon Plaintiffs' claimed injuries and damages as set forth in their Complaint, and Plaintiffs' prior pre-litigation demands, the amount in controversy in this action exceeds Seventy-Five Thousand and 00/100 Dollars (\$75,000.00), exclusive of interests and costs.

4. At the time of commencement of the action, Plaintiffs were and still are citizens and residents of South Carolina. BCI Burke Company, LLC, is a corporate entity organized and existing under the laws of a state other than South Carolina and having its principal place of business in a state other than South Carolina. Specifically, pursuant to 28 U.S.C. § 1332(c)(1), BCI Burke Company, LLC, is a citizen of Wisconsin with its principal place of business also being in Wisconsin. Upon information and belief, both Barrs Recreation, LLC and Outback Creations, LLC are corporate entities organized and existing under the laws of a state other than South Carolina and having their principal place of business in a state other than South Carolina. Therefore, complete diversity of citizenship exists in this matter.

5. Plaintiffs' Complaint arises from an alleged incident in which they assert that on February 4, 2019, a minor, L.J., was playing outside during recess on the playground equipment and subsequently fell onto a protruding portion of the playground equipment causing alleged injuries and other damages. *See* Pl.'s Compl. at ¶¶ 7-12. Plaintiffs allege that the actions of Defendants BCI and Barrs Recreation, LLC led to the minor's alleged injuries. Additionally, Plaintiffs allege that Defendants BCI and Barrs Recreation, LLC were negligent, grossly negligent, reckless, wanton and willful in the breach of their duties owed to Plaintiffs in distributing or allowing to be distributed the playground equipment, failing to discover that the

playground equipment posed an unreasonable risk of harm to its users, failing to inspect the playground equipment to ensure it was not in a condition that posed an unreasonable risk of harm to its users, failing to instruct on the proper and safe installation, use, inspection, and maintenance of the equipment, and failing to warn Plaintiff L.J. and others of the dangerous condition of the playground equipment, which led to this alleged incident. *See* Pl.'s Compl. at ¶¶ 18(a-f). Plaintiffs further allege that as a result of the alleged incident, L.J. sustained injuries and damages, including medical bills, pain and suffering, permanent injury and impairment, loss of enjoyment of life, loss of use, disability for a period of time, mental anguish and distress, and lost wages and income. *See* Pl.'s Compl. at ¶¶ 19(a-i). Plaintiff also asserts a claim for punitive damages. *See* Pl.'s Compl. at ¶¶ 20.

6. Based upon the allegations of Plaintiffs' Complaint and their pre-litigation settlement demand, the amount in controversy in this matter exceeds the sum of Seventy-Five Thousand 00/100 Dollars (\$75,000.00), exclusive of interest and costs. Accordingly, said action is one over which the District Court of the United States has original jurisdiction under 28 U.S.C. § 1332 for the reasons set forth above.

7. BCI hereby gives counsel for the Plaintiffs written notice of the removal of this action and will provide a copy of the filed Notice of Removal to the Clerk of Court for Cherokee County, as required by 28 U.S.C. § 1446(d).

8. BCI files this Notice of Removal within thirty (30) days of the receipt of Plaintiffs' Complaint in the state court action, which was the first pleading properly served upon BCI setting forth Plaintiffs' claims for relief. Upon information and belief, Barrs Recreation, LLC has not yet been served with any pleadings, therefore its permission is not needed for removal purposes.

However, upon further information and belief, BCI does not believe that Barrs Recreation, LLC objects to this matter being removal pursuant to 28 U.S.C. § 1441.

WHEREFORE, Defendant BCI respectfully submits this Notice of Removal this 26<sup>th</sup> day of January, 2022.

*s/ Nashiba D. Boyd*

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